

**Remarks**

Applicant has amended claims 1, 17, 32 and 47 and cancelled claim 37. Applicant respectfully submits that no new matter was added by the amendment, as all of the amended matter was either previously illustrated or described in the drawings, written specification and/or claims of the present application. Entry of the amendment and favorable consideration thereof is earnestly requested.

**Claims 1, 17, 32 and 47**

Each of claims 1, 17, 32 and 47 variously recite a computer to “generate a meal plan” and to “transmit the meal plan to the user computer and to allow the person to alter the meal plan based upon food selections received from the user computer.”

The Examiner has submitted that U.S. Patent Application Publication No. 2002/0133378 (Mault et al.) discloses these limitations citing to “paragraph 43 – calorie management program used.” (Official Action 12/17/07, p. 3) Applicant respectfully disagrees.

For example, Mault et al. discloses that “FIGS. 5A-5B” illustrate the step “of inputting food consumption into a database in the computing device 4” and that the “food database screen” allows for “food items to be entered either by using menu-based system, or by entering sufficient characters to uniquely identify the food item.” (Par. 51) Nowhere does Mault et al. disclose or teach that the generations of a meal plan that is transmitted to the person or that the meal plan may be altered as recited in claims 1, 17, 32 and 47. Rather, it appears that Mault et al. is directed toward a system that facilitates logging of meals the individual has already consumed rather than generation and transmission of meal plans to the user, including the ability to alter the meal plan.

It is well settled that “a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art

reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). In the present case, Mault et al. fails to disclose a computer to “generate a meal plan” and to “transmit the meal plan to the user computer and to allow the person to alter the meal plan based upon food selections received from the user computer” and therefore can not anticipate claims 1, 17, 32 and 47.

This is not an insubstantial difference. For example, the presently pending application states that the system “enhances the ability of the users to follow a weight control program” and one of the features that assists users is “a meal planner” that is “highly interactive and personalized according to personal user input and individualized feedback.” Notice, the meal planner is not simply a meal tracking system, but allows the individual to plan out meals, which are transmitted to the user computer and may be altered by the individual giving complete control and interoperability to the user. This increased control and customizability contributes to helping the user stay on their plan.

Mault et al. cannot accomplish this functionality. Even if Mault et al. did provide for generation of a meal plan, nowhere does Mault et al. teach that the user can alter it based on food selections. For example, if a user is sitting in a restaurant and has a meal plan already generated and sent to the user’s personal device. The user may decide on the spot, to alter the meal the meal plan as they read the menu by inputting alternative selections into their device. The meal plan is then updated as the individual identifies the alternative selections. However, the process occurs before the individual consumes the meal allowing the individual to see how the alternative selections impact the meal plan giving the user complete control of their plan while still providing information to make sure they maintain selected goals.

Accordingly, because Mault et al. fails to teach a computer to “generate a meal plan” and to “transmit the meal plan to the user computer and to allow the person to al-

ter the meal plan based upon food selections received from the user computer", it can not render claims 1, 17, 32 and 47 obvious.

Additionally, claims 32 and 47 further recite a computer "to maintain a target food consumption value" and to allow the person to "alter the target food consumption value based upon activity selections." Again, this feature allows an individual to modify a meal plan based upon selected activities the individual has engaged in. For example, an individual may have their meal plan transmitted to their personal device, however, the individual may have engaged in an activity that would allow the individual to increase their caloric intake or alternatively they did not engage in an activity, requiring them to lower their caloric intake for the particular meal. In any event, the individual has total control of their meal plan and can alter it prior to selecting and/or consuming the actual meal itself.

#### Claims 44 and 48

Claim 44 variously recites that the activities which are favorites of the person are specified by the person, while claim 48 recites that the foods and activities which are favorites of the person are specified by the person.

The Examiner has pointed to the Article "Thinning Out The Diet Myths" USA Today, Jan. 3, 2001 (the Hellmich article) as teaching this limitation. Applicant respectfully disagrees.

For example, the Hellmich article states "encourage children to choose a favorite activity. Physical activity will burn calories and keep them from eating out of boredom." (Hellmich article, p. 3) The Hellmich article is not directed toward a networked computer system to aid in weight loss. Rather, the Hellmich article is directed toward exposing diet myths. There is no system disclosed therein, nor is there any teaching of how to implement the general statements (e.g. choose a favorite activity to engage in) into a networked computer system.

A rationale to support a conclusion that a claim would have been obvious is that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded nothing more than predictable results to one of ordinary skill in the art. *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_, \_\_\_, 82 USPQ2d 1385, 1395 (2007); *Sakraida v. AG Pro, Inc.*, 425 U.S. 273, 282 (1976). In this case, the Hellmich article does not disclose or teach the claim element of claims 44 and 48 that activities which are favorites of the person are specified by the person from a favorites database (claims 43 & 47).

Accordingly, Applicant respectfully submits that because the cited art fails to teach a favorites database that includes activities which are favorites of the person are specified by the person, no combination of the cited art can render claims 44 and 48 obvious.

#### Claim 49

Claim 49 further recites that the foods and activities which are favorites of the person are determined automatically by software executing on the weight control program computer.

The Examiner has submitted that Mault et al. teaches that foods and activities that are favorites are determined automatically citing "target food consumption calculated; activity selections automatically calculated into balance reports." (Official Action 12/17/07, p. 12)

However, claim 47 is directed toward generating a meal plan taking into consideration both food and activities. As recited in claim 49, the meal plan is determined automatically (e.g. foods and activities are determined automatically) based upon the user's identification of the activity and/or food as a favorite. This is very different from Mault et al. teaching that balance reports automatically take into account activity selec-

tions. Mault et al. does not teach that the activities and the food are automatically selected to generate a meal plan that is transmitted to the user and may subsequently be altered by the user. The specification of the current application describes an advantageous embodiment of this functionality in even greater detail at paragraphs 93, 109 and 112 ("it is determined whether the user 110 wants a meal plan automatically created or the user 110 wants to create the meal plan.") (Par. 112).

Accordingly, Applicant respectfully submits that because the cited art fails to teach that the foods and activities which are favorites of the person are determined automatically by software executing on the weight control program computer, no combination of the cited art can render claim 49 obvious.

It is respectfully submitted that claims 1-36 and 38-53, all of the claims remaining in the application, are in order for allowance and early notice to that effect is respectfully requested.

Respectfully submitted,

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